

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 12/08/04 Item No.: 3.c.

File Number
CP04-082

Application Type
Conditional Use Permit

Council District
9

Planning Area
Willow Glen

Assessor's Parcel Number(s)
442-20-001

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Suparna Saha

Location: Southeast corner of Curtner and New Jersey Avenues

Gross Acreage: 28.4

Net Acreage: 28.4

Net Density: N/A

Existing Zoning: R-1-8 Residence

Existing Use: Public/Quasi Public (School)

Proposed Zoning: No change

Proposed Use: Six (6) wireless communication antennas inside two (2) 50-foot high monopoles (flagpoles) of which one is existing and associated 200 square feet equipment shelter at an existing school site on a 28-4 gross acres.

GENERAL PLAN

Completed by: Suparna Saha

Land Use/Transportation Diagram Designation
Public/Quasi Public

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Suparna Saha

North: Single-family detached residential

R-1-8 Residence

East: Single-family detached residential

R-1-8 Residence

South: Single-family detached residential

R-1-8 Residence

West: Single-family detached residential

R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: Suparna Saha

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Suparna Saha

Annexation Title: Leigh No.5-A

Date: March 07, 1960

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: December 2, 2004

☐ _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER

Cambrian School District
Attn: Stephan L. Phillips
4115 Jackson Drive,
San Jose, CA 95124

DEVELOPER

Zachary Carter, Ruth & Going
2216 The Alameda
Santa Clara, CA 95050

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Suparna Saha

Department of Public Works

No comments

Other Departments and Agencies

Fire Department

GENERAL CORRESPONDENCE

None

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Cingular Wireless, is requesting a Conditional Use Permit to install two, 50-foot tall, freestanding monopoles (flagpoles) and a 200 square foot ancillary equipment shelter on a 28.4 gross acre site in the R-1-8 Residence Zoning District. The site is located at the southeast corner of Curtner and New Jersey Avenues, and the site is currently developed as a school site (Price Middle School). Pursuant to Table 20.50 of the San Jose Municipal Code, issuance of a Conditional Use Permit is required for the installation of a wireless communication antennas in the R-1-8 Residence Zoning District. These monopoles/flagpoles were constructed prior to obtaining necessary Planning Permits.

The proposed monopoles have a diameter of 12 inches and Cingular proposes to install six (6) panel antennas in the upper 11 foot of the monopoles. The base of the monopoles have raised decorative planters 10'x 4' on either side (see photographs). Associated equipment cabinets are located north of the monopoles (flagpoles) on the school ground against the school building, enclosed by a 6 foot wooden fence.

The subject site is flat and generally rectangular in shape. The proposed monopoles (flagpoles) are on the west side of the subject property, adjacent to New Jersey Avenue, and approximately 160 feet south of Josephine Avenue. Surrounding uses are residential to the north, east, south and west.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from the antennas.

Project Description

The project proposes to replace an existing flagpole and erect a new (monopole) flagpole and six antennas, three in each monopole concealed within the 50-foot monopoles. The proposal includes replacement with structural alteration, enlargement to the existing flagpole to accommodate the proposed antennas. The existing height of the flagpole is 31'-4" and after replacement the total height of the modified and new monopole (flagpoles) will be 50 foot, a height increase of approximately 18'-6" to accommodate the antennas.

The modified and the new monopole (flagpoles) will be constructed of steel and fiberglass, (39'-0" from the base upward will be of steel and the remaining 11 foot will be of fiberglass). The proposed antennas will be mounted within the upper section of the monopoles at a height of approximately 39 foot. There will be three antennas inside each monopoles (flagpoles). Each antenna measures 63"x6"x3" (LxWxD) and is rectangular in shape. All the antennas are mounted in the fiberglass radome in the top of the monopole (flagpole).

The antennas within the monopole will not be visible when looking at the monopoles (flagpoles). The monopoles are 30 foot apart and are located in the front of the school's administrative building. Photographs of the proposed project have been provided by the applicant and are attached to this report. The area in which the monopoles with the antennas are proposed is located at the side of the property line, to the west. It will be set back 98 feet and 112 feet from the nearest westerly residential property lines respectively.

The accompanying equipment cabinet is proposed to be located along the northwesterly property line along New Jersey, south of Josephine Avenue approximately 140 feet north of the antennas. The nearest residential property line from the equipment lease area is 118 feet. The equipment cabinets are to be located within a 22'x9' lease area, enclosed with a 6 foot tall wooden fence that will be painted and textured to match the existing school building. The cabinets will be placed on a concrete pad within the lease area.

A grouping of six (6) 15-gallon shrubs are proposed to be planted to further screen the equipment shelter from all sides. The type and species of the plantings will match the existing landscaping of the school. Coaxial cables will connect the antennas to the equipment within the enclosure. This proposal does not include an emergency back-up generator.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environment review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act. This section of the guidelines provide an exemption for the operation, leasing, etc. of existing private structures with no significant expansion of use. The proposed use is for addition of six (6) wireless communication antennas within a modified and new monopoles (flagpoles) and ground mounted 200 square-foot equipment enclosure on an existing school site. It is staff's opinion that the proposal adequately conforms to this section of the CEQA Guidelines.

GENERAL PLAN CONFORMANCE

The subject site is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designated Public/Quasi Public in that wireless communication antennas are considered to be in conformance with General Plan Policies provided that the proposal conforms to City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities. The aforementioned policy indicates that wireless communication antennas are

appropriate in Public/Quasi Public designated lands.

ANALYSIS

The primary issues analyzed under this proposal include conformance with City Council Policy 6-20, *Land Use Policy for Wireless Communications Antennas*, which provides criteria for siting such facilities including location, setbacks from residential uses, and parking.

Conformance to City Council Policy 6-20 for Wireless Communications Antennas

The City Council policy generally discourages wireless communications facilities from properties with residential land use designations except Residential Support for the Core, High-Density Residential, or Transit Corridor Residential. Although the site has a residential zoning district designation, the project conforms to the General Plan because the 28.4 gross acre site has a General Plan designation of Public/Quasi Public, and is developed with non-residential uses including a school. This is consistent with the Wireless Communication Policy. The school site contains an existing freestanding monopole (flagpole) and the project proposes to install a new monopole in addition to the existing and locate six (6) antennas, inside two monopoles (flagpoles). The Council Policy allows communication antennas and associated equipment shelters concealed inside “stealth” poles (flagpoles) thus being consistent with the Council policy.

The Council policy indicates that antennas that are mounted on freestanding monopoles such as within flagpoles be located at a minimum distance of 35 feet horizontally from a single-family residential property line. The structure-mounted antennas are located approximately 98 feet and 112 feet horizontally from the western single-family residential property lines. Staff believes that the siting of these monopoles is consistent with the intent of the Council Policy to ensure separation between the antenna use and residences, given that there is ample separation between the two uses. The antennas will be located inside the slim line monopoles (flagpoles) approximately 50 feet tall.

The Council Policy requires freestanding monopoles/ structure-mounted antennas to be located to minimize visual impacts and to be architecturally-integrated into the structure. It also requires ancillary equipment to be screened. The proposed antennas are located inside an existing modified and one new flagpole. Although, the flagpoles will be slightly modified in width to be no more than 12 inches in diameter to accommodate the antennas, this it will not significantly add to the visual impacts already created by the existing flagpole.

The equipment enclosure is proposed to be screened by 6-foot tall wooden fence that will be painted and textured to match the existing building. Although the equipment is located adjacent to the school building, the proposed equipment and enclosure will not be visible from adjacent properties. In conformance with the Policy, additional landscaping, including six (6) shrubs, are to be planted to screen the visibility of the equipment enclosure from the northern western residential property line and the view from New Jersey Avenue.

Alternative Analysis

The applicant explored various alternatives to the proposed monopoles. Various reasons precluded use of alternatives to the proposed monopole including the geographic area in need of service the scarce number of tall buildings and/or structures of sufficient height within the generally residentially geographic area and the reluctance of some property owners to allow antennas installations.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District.
3. The subject site is 28.4-acres in size and is owned and developed as a school, with an existing monopole (flagpole).
4. The proposed project includes installation of six (6) wireless communication antennas inside two monopoles (flagpoles) 50 feet in height and 12 inches in diameter.
5. The proposed monopoles (flagpoles) will increase the overall height of the original flagpole by 18 feet (monopole).
6. The proposed antennas will have a minimum horizontal separation of 98 feet and 112 feet from the nearest residential property lines. This is consistent with Council Policy that 35 feet should be the usual minimum horizontal distance to residential property lines.
7. The antennas will be concealed inside the flagpoles which will be painted to match the surrounding structures to minimize the visual impact. Additional landscaping is proposed to screen the visibility of the equipment enclosure from the residential property line and from New Jersey Avenue.
8. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
9. The proposed equipment enclosure will effectively screen the equipment with a new 6-foot tall wooden fence.
10. The proposed project does not include an emergency back-up generator.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the site's General Plan Land Use/Transportation Diagram designation of Public/Quasi Public given the site is developed with a school.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is generally consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Price Middle School BA-349-02" dated November 11, 2002, revised October 25, 2004, on file with the Department of Planning, Building and Code Enforcement.
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Colors and Materials.** All building, structures and fencing colors and materials are to be those specified on the approved plan set.
9. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP04-0082 shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
10. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as required to the satisfaction of the Fire Chief.

11. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
12. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
13. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
14. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
15. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement.
16. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
17. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
18. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements and related equipment/enclosures associated with this permit within 30 days.
19. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PCS antennas for other providers. Other wireless providers shall also be allowed to add on to existing at grade equipment enclosures.
20. **Generators.** This project does not permit the use temporary or permanent emergency back-up generators unless otherwise approved by the Director of Planning.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.